

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A – 1:30 p.m.
Indianapolis, Indiana
November 18, 2008

The meeting was called to order by Mr. Rick Dyar, Vice Chairperson, at 1:30 p.m. Those present for all or part of the meeting were:

Mr. Tom Barnett
Mr. Mark Davis
Mr. Chuck Himes
Dr. Ted Niemiec
Dr. Lenore Tedesco
Mr. Jason Ward
Mr. Howard Cundiff, (Proxy, Indiana State Department of Health)
Mr. Tom Hohman (Proxy, Department of Natural Resources)
Ms. Pam Fisher (Proxy, Indiana Economic Development Corporation)

A quorum was present.

In addition, the following Indiana Department of Environmental Management (IDEM) staff members were present for all or part of the meeting:

Mr. Bruce Palin, Assistant Commissioner, Office of Land Quality
Mr. Mike Dalton, Section Chief, Rules, Planning and Outreach Section
Ms. Lynn West, Rules, Planning, and Outreach Section
Ms. Kiran Verma, Rules, Planning, and Outreach Section
Ms. Lydia Kuykendal, Rules, Planning, and Outreach Section
Ms. Marjorie Samuel, Office of Prevention Pollution and Technical Assistance
Ms. Janet Pittman, Rules, Planning, and Outreach Section
Ms. Ann Long, Office of General Counsel
Mr. Skip Powers, Section Chief, Underground Storage Tanks
Mr. Pat Carroll, Chief, Drinking Water Branch, Office of Water Quality
Mr. Scott Nally, Assistant Commissioner, Office of External Affairs

1. Vice Chairperson Dyar asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of July 15, 2008. There being none, Vice Chairperson Dyar asked for a motion to approve the minutes. Mr. Howard Cundiff so moved and Mr. Chuck Himes seconded. The motion passed unanimously. APPROVAL OF MINUTES

2. Vice Chairperson Dyar asked Mr. Bruce Palin, Assistant Commissioner, to address the Board. Mr. Palin said that because there was a lengthy agenda, he would have Ms. Lynn West present the update on the rules. IDEM REPORTS

Ms. West distributed the Rulemaking Projects list and reviewed the new rules.

- a. LSA #08-673 – 2008 Hazardous Waste Annual Update and F019 Amendments to 329 IAC 3.1.
- b. LSA #08-684 – Excess Liability Trust Fund Change Rule. This rule will clarify Title 328 and update reimbursement amounts. This rule will go before the Financial Assurance Board.

Ms. West then distributed a memo from the Ethics Commission, which requires that all Solid Waste Management Board members take the ethics training. She explained that all state officers, employees and special state appointees are required to take the training every two years through a PeopleSoft program. Ms. West provided them with a login and informed them of the November 26, 2008, deadline to complete the training program.

Ms. West recognized Marjore Samuel for her 14 + years of dedicated service working with the Solid Waste Management Board. Ms. Samuel accepted a promotion as administrative assistant to the Assistant Commissioner of IDEM's Office of Pollution Prevention and Technical Assistance.

3. Vice Chairperson Dyar announced the following rulemaking actions:

- a. LSA #08-673 - Preliminary adoption of amendments to the Hazardous Waste Management Rules concerning the 2008 Update and amendments to the F019 Hazardous Waste Listing under 329 IAC 3.1. The Findings and Determination of the Commissioner pursuant to IC 13-14-9-7 and draft rule were published in the Indiana Register on August 27, 2008, at DIN: 20080827-IR-329080673FDA. This hearing was noticed in the Indiana Register on August 27, 2008, at DIN: 20080827-IR-329080673PHA.
- b. LSA #08-55 - Final Adoption of new rules and amendments to 329 IAC 9, Protection of Ground Water Rule. The hearing was noticed in the Indiana Register on November 5, 2008, at DIN: 20081105-IR-329080055PHA. The proposed rule was published in the Indiana Register on November 5, 2008, at DIN: 20081105-IR-329080055PRA.
- c. LSA #08-212 - Final Adoption of the RCRA Standardized Hazardous Waste Permit Rule. This hearing was noticed in the Indiana Register on August 20, 2008, at DIN: 20080820-IR-329080212PHA. The proposed rule was published in the Indiana Register on August 20, 2008, at DIN: 20080820-IR-329080212PRA.

Vice Chairperson Dyar said that the stated rules were included in the Board packets for this meeting and were available for public inspection in the file room of IDEM, located on the 12th floor of the Indiana Government Center North, Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. Instructions were given to the public regarding offering oral statements and comments to the Board. He said that all comment cards should have been submitted. The court reporter was affirmed.

4. Vice Chairperson Dyar announced the public hearing to consider preliminary adoption of LSA #08-673, amendments to the Hazardous Waste Management Rules concerning the 2008 Update and amendments to the F019 Hazardous Waste Listing under 329 IAC 3.1 Rule. He introduced Exhibit A, the draft rule, into the record of the hearing. Vice Chairperson Dyar asked Mr. Steve Mojonnier to address the Board.
- PRELIMINARY ADOPTION OF
AMENDMENTS TO THE
2008 HAZARDOUS WASTE
UPDATE AND
AMENDMENTS TO THE
F019 HAZARDOUS
WASTE LISTING UNDER
329 IAC 3.1.

Mr. Mojonnier reviewed the history of the rulemaking activities. He explained that the rule encompasses three amendments to the hazardous waste rules.

- a. Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas, published by the Environmental Protection Agency (EPA) January 2, 2008. This rule will affect Indiana's two petroleum refineries and also promote recycling of oil-bearing hazardous secondary materials generated by the refining industry. It amends an existing exclusion for oil-bearing hazardous secondary materials when the materials are

processed in a gasification system at a petroleum refinery for production of synthesis gas. This exclusion will help secure as much energy from a barrel of oil as possible to help maximize production efficiencies at certain refineries.

- b. The second rule adopts amendments to the National Emissions Standards for Hazardous Air Pollutants for Hazardous Waste Combustors published by the EPA April 8, 2008. This rule clarifies several compliance and monitoring provisions and corrects omissions and typographical errors.
- c. The third rule adopts amendments to Hazardous Waste Code F019 published by the EPA June 4, 2008. This rule will affect certain motor vehicle manufacturing plants.

Mr. Mojonnier stated that IDEM is recommending repealing 329 IAC 3.1-6.7 to remove the existing delisting rule for F019, waste water treatment sludge generated by General Motors (GM) Fort Wayne Assembly Plant. The current delisting rule is stricter than any F019 Amendments IDEM is proposing to adopt. It would require GM to perform quarterly testing not required under the EPA amendments.

The oil-bearing secondary materials amendment is estimated to have a potential costs savings of between \$67,600 - \$331,500 and \$603,200 - \$633,100, depending on the assumptions used. Considerable amounts of these cost savings are offset by revenue losses to commercial waste management facilities. The potential cost savings from this rule cannot be measured at this time. The amendments to the Hazardous Waste Combustor NESHAP would not produce any new costs or cost savings.

He also stated that EPA estimated the F019 amendments to result in an annual cost savings of \$71,429 - \$185,715 per facility. The current delisting rule for General Motors Fort Wayne Assembly Plant resulted in an annual cost savings of approximately \$104,000. General Motors could attain extra costs savings over that because of reduced testing. Although potential cost savings can't be calculated at this time, IDEM estimates that the annual cost savings won't exceed \$500,000 to regulated entities in Indiana. Mr. Mojonnier then recommended that the board preliminarily adopt the 2008 Hazardous Waste Annual Update and F019 amendments as presented today in Exhibit A.

Vice Chairperson Dyar asked if there were questions from the Board. Mr. Tom Barnett asked if the board was adopting federal regulations, to which Mr. Bruce Palin answered in the affirmative.

There being no further Board discussion or questions, Vice Chairperson Dyar then asked Mr. Tom Vallone, General Motors Corporation, to offer public comment to the Board.

Mr. Vallone commenced by stating General Motors' support and offered gratitude to IDEM and the Board for the adoption of changes to the Hazardous Waste Management Program and the changes to the F019 Hazardous Waste Listing. He said that the changes to the F019 listing reduced the cost of disposal with no threat to the environment and also changes will reduce burden associated with current delisting arrangements, and that the F019 sludge generated at their assembly plants have not had any of the contaminants of concerned for which the listing was written. He provided his phone number for anyone who requested further information. Please see pages 18 through 19 of the official transcript for a verbatim account.

Vice Chairperson Dyar concluded the hearing. There were no further questions from the Board so he asked for a motion to preliminarily adopt the rule as presented. Dr. Lenore Tedesco so moved and Mr. Tom Hohman seconded. The motion passed unanimously.

5. Vice Chairperson Dyar announced the public hearing to consider final adoption of #08-55, amendments to Rules at 329 IAC 9, Protection of Ground Water, for final adoption. He then introduced Exhibit B, the proposed rule as preliminarily adopted, and Exhibit B-1, IDEM's suggested changes, into the record of the hearing. He then asked Ms. Lynn West to address the Board.

FINAL ADOPTION
AMENDMENTS TO
329 IAC 9
PROTECTION OF
GROUND WATER

Ms. West explained that this rulemaking for final adoption is the Energy Policy Act of 2005, Public Law 109-58, effective August 8, 2005, under Subtitle B in the Underground Storage Compliance Act. Under Section 1530 of the Act, Congress requires additional measures to protect ground water by requiring secondary containment and monitoring for leaks of new underground storage tanks or their piping connections or replacement of any existing underground storage tanks after February 8, 2007, if they are within 1,000 feet of any existing community water system or any existing potable drinking water well. The second option is that a person who manufactures or installs an underground storage tank system or piping is required to maintain evidence of financial responsibility to provide for the cost of corrective actions that are related to releases caused by improper manufacture or installation. Otherwise the installer or manufacturer should demonstrate that they are covered as an owner or operator of the underground storage tank.

Ms. West reviewed the discussions, comments, and concerns received from tank manufacturers, installers, petroleum fueling companies, and others during discussions and comment periods. After much deliberation, the Department recommended the board adopt a rule requiring secondary containment of tanks installed after the rule is effective. Ms. West reviewed all of the reasons for the selection of secondary containment as well as why the option for financial responsibility was not chosen. Ms. West stated that the rule will afford added protection to ground water in Indiana as well as meet the federal requirements. She asked that the Board adopt IDEM's suggested changes to the rule as presented in Exhibit B-1 and then final adopt the rule as amended. She stated that technical staff were available to answer any questions. Ms. West read the changes contained in Exhibit B-1 into the record. Please see pages 21 through 27 of the official transcript for a verbatim account of Ms. West's presentation. Vice Chairperson Dyar asked for questions from the Board.

Vice Chairperson Dyar noted that there were requests from the public to address the Board. Comments were presented by the following:

- a. Keith Welch, K & W Fueling System, Inc. -- declined to comment
- b. Bill Greer, Indiana Petroleum and Environmental Contractors Association (IPECA)
- c. Kenny Payne, Modern Welding Company of Owensboro, Inc.
- d. Pat Kennedy, Kennedy Tank & Manufacturing Company, Inc. -- declined to comment
- e. Dan Esposito, OES, Indianapolis, IN

Mr. Greer stated that he was the Executive Director of IPECA. He said that he attended the July 15 hearing and that he wanted to restate some of his previous comments along with additional information. He reiterated that the association is in support of the proposed rule. He stated that 48 states have adopted secondary containment. He also stated that recently EPA's director for Underground Storage Tanks said they will soon re-visit the current underground storage rules that are approximately 20 years old. The assumption would be that the new rules will be more strict. He also stated concerns that the trust fund will be in trouble if the financial responsibility option is selected because installers and manufacturers would use the insurance before they use the trust fund. He said the Petroleum Institute has predicted that some smaller installers will go out of business if financial responsibility option is adopted. He spoke of the effect of financial responsibility in other states causing installers to go out of business. Please

see pages 28 through 33 of the official transcript for a verbatim account. Mr. Greer's written statement with eleven supporting reasons is part of the official records of this meeting.

Mr. Kenny Payne, Modern Welding of Owensboro, Kentucky, stated his support of secondary containment. His company manufactures underground tanks and said that protecting the environment was their major concern. He explained the design of a tank and the history of the increase of the size of the tanks which further increases the concern of protection. Secondary confinement also makes remediation easier. He said that secondary containment is a proactive response to prevention. He said that 95% of the country has gone with secondary containment. Responding to Mr. Ward's question, Mr. Payne stated that in 2008, he could not recall receiving an order for a single-wall tank, and that encompasses Indiana and 3 surrounding states, including Missouri (financial responsibility), who has only ordered a double-wall or secondary containment tank.

Mr. Pat Kennedy of Kennedy Tank declined comment at this time.

Mr. Dan Esposito, who is with OES and other equipment suppliers, said his company is a distributor and service company in this industry. He raised the question of the language "all newly installed tanks and piping or all replaced tanks and piping will be interstitially monitored." His company supports the secondary containment rule as originally presented, except for the interstitial monitoring. Interstitially monitoring the piping could cause the cost to be greater.

Mr. Payne commented that it was his understanding that if a tank owner would have to interstitial monitor, there's a significant cost, but it also permits visual monitoring, so the cost will be minor. Mr. Skip Powers was in agreement.

Mr. Payne said that EPA's general interpretation is that a tank owner is allowed to visually monitor as well. Ms. West added that this is a requirement that the EPA requested she insert to meet the standards in the federal rule.

Mr. Esposito said that if that was the interpretation, then he would accept it.

Mr. Barnett asked Ms. West if the phrase "including visual monitors is an acceptable form of interstitial monitoring" could be added to the rule. A discussion followed regarding a definition of interstitial monitoring and inserting "visual" for clarification. Mr. Jason Ward asked if visual monitoring were allowed that it should be limited to the piping and not necessarily the tank. Mr. Palin stated that it would be tricky to develop exact language to put in the rule. He suggested that it could be done through a nonrule policy document, which would offer the department's monitoring interpretation. He thought the language is here to afford the flexibility of what would be acceptable monitoring, whether visual, mechanical, or electronic. IDEM could also then ask the EPA for guidance documents for a nonrule policy document that the Department could bring back to the board at a later date. Discussion followed on the interpretation of the rule, and it was stated that clarification could be provided in the nonrule policy.

Dr. Ted Niemiec quoted Section 27.5 that there must be continuous monitoring. 329 IAC 9-1-27.5 states that the release detection method that continuously monitors interstitial space of the underground storage tanks and piping is what the rule is referring to. The question arose as to whether the EPA required this definition. Ms. West answered no, and said that EPA required 1.3. She said that she had sent the rule for review before final adoption to ensure that it met all the federal requirements, and this was a section that EPA wanted her to add to the rule in order to be consistent with the federal law.

Vice Chairperson Dyar then asked if there were any more questions for the commentors, not including IDEM staff. There were none. Vice Chairperson Dyar concluded the hearing and proceeded to board action on final adoption. He asked if the Board had any questions to be addressed by IDEM staff.

Dr. Niemiec said that it seemed the rule language covered the elements of currently acceptable continuous monitoring. However, nonrule policy documents could be used to address issues of clarification as needed. Other board members agreed with Dr. Niemiec. Vice Chairperson Dyar asked if there was any further discussion. There was none. For a complete accounting of the public commenters' remarks and ensuing discussion, please see pages 28 through 56 of the official transcript.

Vice Chairperson Dyar asked for a motion to adopt Exhibit B-1, IDEM's suggested changes. Dr. Niemiec so moved and Mr. Mark Davis seconded. The motion passed unanimously. Vice Chairperson Dyar then asked for a motion to final adopt Exhibit B, the rule as amended. Mr. Davis so moved and Dr. Tedesco seconded. The motion passed unanimously.

6. Vice Chairperson Dyar announced the public hearing to consider final adoption of LSA #08-212, the RCRA Standardized Hazardous Waste Permit Rule. He introduced Exhibit C, the proposed rule, into the record of the hearing. Vice Chairperson Dyar asked Mr. Steve Mojonniere to address the Board.

FINAL ADOPTION OF
RCRA STANDARDIZED
HAZARDOUS WASTE
PERMIT RULE

Mr. Mojonniere explained that the new rule would adopt EPA's new RCRA Standardized Permits by adding a new 329 IAC 3.1-11.5 to the Hazardous Waste Rules and amend three sections of the Hazardous Waste Permitting Rules in 329 IAC 3.1-13. The EPA published the standardized permit rule on September 8, 2005. The rule will incorporate by reference 40 CFR Part 267 and also make changes to the RCRA permitting rules in 329 IAC 3.1-13. The permit would be available to RCRA hazardous waste treatment, storage, and disposal facilities that generate, and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. Based on EPA's economic analysis of the federal rule, it is estimated to reduce cost for eligible facilities in Indiana by \$200,000 to \$246,000 per year. IDEM published the findings and determination for this rule and the draft rule on April 2, 2008. No comments were received during the comment period, and no one commented on the rule at the first hearing. Mr. Mojonniere asked the Board to final adopt this rule as presented in Exhibit C. See pages 59 through 61 of the official transcript of this meeting for a verbatim account of Mr. Mojonniere's remarks.

Vice Chairperson asked for questions from the Board. Mr. Barnett asked if this was a hazardous waste treatment, storage or disposal facility and if it will help simplify the process, to which Mr. Mojonniere replied in the affirmative.

Vice Chairperson Dyar noted that there were no public commentors on the proposed rule and no further questions from the Board, so the hearing was closed. Chairperson Dyar asked for a motion to final adopt the rule as presented. Mr. Cundiff so moved and Messrs. Tom Hohman and Chuck Himes both seconded. The motion passed unanimously.

7. Vice Chairperson Dyar announced the presentation of the non-rule policy document, NPD-Water-018, Implementation of Ground Water Quality Standards, 327 IAC 2-11. Mr. Pat Carroll, Chief, Drinking Water Branch, Office of Water Quality, was introduced as the presenter. Mr. Carroll said that this NPD outlines how IDEM foresees the implementation of the State Ground Water Quality Standards. These standards became

NONRULE
POLICY DOCUMENT
NPD-WATER-018

effective in 2002, and were changed to include updated arsenic standards that were final-adopted by the Water Pollution Control Board in September 2008. The statute requires IDEM's Office of Water Quality to develop the standards and the Water Pollution Control Board to adopt them. These standards would then be adopted by the various programs within IDEM, along with the Department of Natural Resources, the Department of Health, the Office of the Indiana State Chemists, and the State Fire Marshal to become effective. The exception to this procedure is that standards concerning contamination of drinking water wells are immediately enforceable.

Mr. Carroll then outlined what the NPD does. The NPD for the Ground Water Quality Standards clarifies that other agencies and other programs within IDEM must adopt rules to apply the standards to activities that they regulate. The NPD clarifies that "...the standards are designed for regulatory programs to use their knowledge about that activity..." in their application of the standards of the ground water standards. It is not "...one size fits all." The NPD also clarifies that risk-based cleanups of ground water are allowed. Finally, the NPD clarifies that IDEM has the authority to immediately address with various options available, the contamination of drinking water wells to protect public health. This NPD was developed with input from a workgroup composed of members from the regulated community, environmental organizations, IDEM staff, and two Water Pollution Control Board members. Mr. Carroll said that this NPD was presented to the Water Pollution Control Board at their September meeting.

Mr. Barnett asked about the arsenic standards. Mr. Carroll replied that the standard was 50 parts per million, and it is currently 10 parts per million to match the drinking water standard by applying the federal drinking water standards and applying them to ground water. Also, risk methodology was discussed. For a verbatim account of Mr. Carroll's presentation, please see pages 63 through 72.

8. Vice Chairperson Dyar announced that the Board was interested in hearing from the public on topics of interest and potential rulemakings on Title 329. There were no speaker cards and no public comments. OPEN FORUM

Ms. West introduced Dr. Ted Niemiec and welcomed him to the Board.

9. Vice Chairperson Dyar adjourned the meeting at 2:53 p.m. ADJOURNMENT

The next meeting is scheduled for Tuesday, January 20, 2009, at 1:30 p.m. at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana

